

JOSEPH P. RUSSONIELLO (CABN 44332)
United States Attorney

BRIAN J. STRETCH (CABN 163973)
Chief, Criminal Division

LARA M. KROOP (CABN 239512)
Lara.Kroop2@usdoj.gov
Special Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7129
FAX: (415) 436-7234

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 08-0220 MMC
)	
Plaintiff,)	UNITED STATES' SENTENCING
)	MEMORANDUM
v.)	
)	Date: July 23, 2008
ALEJANDRO TOSCANO-VASQUEZ,)	Time: 2:30 p.m.
)	Courtroom: 7, 19 th Floor
Defendant.)	Hon. Maxine M. Chesney

I. INTRODUCTION

On April 16, 2008, Defendant Alejandro Toscano-Vasquez pled guilty to the above-captioned indictment, a violation of 8 U.S.C. § 1326, Illegal Reentry after Deportation. This Court has set July 23, 2008, at 2:30 p.m. as the date for judgment and sentencing. The government submits the following sentencing memorandum in order to advise the Court of the government's sentencing guideline calculations and its sentencing recommendation.

II. STATEMENT OF FACTS

Defendant was deported from the United States on August 25, 2007 following his

UNITED STATES' SENTENCING MEMORANDUM
CR 08-0220 MMC

1 sentencing for two felony convictions. Defendant subsequently reentered the United States in
2 December 2007 on foot. On January 2, 2008, Defendant was arrested and sentenced seven days
3 later for committing two felonies. On January 3, 2008, Defendant came to the attention of
4 Immigration and Customs Enforcement officers (“ICE”) pursuant to his incarceration in San
5 Mateo County jail. Following his release from jail, on March 20, 2008, ICE officers interviewed
6 Defendant. Defendant provided a sworn statement to ICE officers in which he admitted that he
7 was an alien, he had previously been deported and he had illegally reentered the United States.

8 III. ARGUMENT

9 As this Court is well aware, the United States Sentencing Guidelines (“the Guidelines”)
10 are no longer binding after the Supreme Court’s decision in *United States v. Booker*, 543 U.S.
11 220 (2005). Instead, this Court is to consider the Guidelines along with the other factors set
12 forth in Title 18, United States Code, Section 3553(a) to impose a sentence that is sufficient but
13 no more than necessary to achieve the objectives of sentencing. *United States v. Carty*, 520 F.3d
14 984, 991 (9th Cir. 2008) (citing 18 U.S.C. § 3553(a)(1) and (a)(2)).

15 At sentencing the Court must begin by determining the applicable Guidelines range
16 because the Guidelines are the “starting point and the initial benchmark” for determining an
17 appropriate sentence. *United States v. Gall*, 128 S.Ct. 586, 596 (U.S. 2007); *United States v.*
18 *Kimbrough*, 128 S.Ct. 558, 574 (U.S. 2007) (reiterating that the Guidelines are the starting point
19 and citing *Gall*). The Court should then consider the factors in § 3553(a) as part of its analysis
20 of the parties’ proposed sentences. *Gall*, 128 S.Ct. at 596-597 n.6; 18 U.S.C. § 3553(a)(1)-(7).

21 A. Guidelines Range

22 The United States agrees with the United States Probation Officer that the adjusted
23 offense level for Defendant is 10; the Criminal History Category is III; and the resulting
24 sentencing range under the Guidelines is 10-16 months. The United States, in agreement with
25 the United States Probation Officer, recommends a low-end sentence of 10 months. This
26 recommendation is reasonable and appropriate and Defendant is not entitled to any departure
27 from the Guidelines range. Although the Court is not bound to impose a Guidelines sentence,
28

1 the United States contends that a within-Guidelines sentence is consistent with sentences
2 imposed for similarly situated defendants; would prevent disparity in sentencing; and properly
3 accounts for Defendant's criminal conduct and the factors in § 3553(a).

4 B. 3553(a) Factors

5 1. Nature and Circumstances of the Offense and History and Characteristics
6 of the Defendant

7 Defendant committed the current offense of illegal reentry while still under a criminal
8 sentence imposed on him in August 2007. Defendant had been convicted of two felonies on
9 August 16, 2007. He was then deported from the United States on August 25, 2007. By his own
10 admission, he returned to the United States illegally in December 2007. On January 9, 2008, less
11 than a month after returning to the United States, Defendant was convicted of two more felonies.
12 Defendant has amassed a significant criminal history in a five month period—between August
13 2007 and January 2008. The current offense alone is a felony with substantial consequences.
14 However, of additional concern here is the fact that Defendant committed four felonies, not
15 including the current crime of illegal reentry, within a five month period. Defendant has started
16 down a path of repetitive criminal conduct. In recommending a sentence of 10 months in
17 custody, the United States has considered the nature and circumstances of this offense and the
18 history and characteristics of Defendant.

19 2. The Need for the Sentence Imposed

20 As discussed above, Defendant's conduct demonstrates a current and repetitive lack of
21 respect for the law. Defendant committed four felonies in five months and during that same five
22 month period he reentered the United States illegally following deportation. In this case, the
23 United States concurs with the United States Probation Officer that a 10 month sentence is
24 appropriate to punish Defendant for the current offense, and to impress upon him that there are
25 serious consequences to violating the law. A sentence of this length appropriately reflects the
26 seriousness of his current offense and the gravity of his recidivist behavior. Additionally, given
27 the recency of Defendant's repetitive criminal conduct, a 10 month sentence is appropriate.
28 Therefore the imposition of a low-end sentence of 10 months is sufficient, but not longer than

1 necessary, to achieve the objectives of sentencing.

2 IV. CONCLUSION

3 For the reasons set forth above, the United States joins the United States Probation
4 Officer and recommends a sentence of 10 months in custody followed by three years of
5 supervised release.

6
7 DATED: July 15, 2008

Respectfully submitted,
JOSEPH P. RUSSONIELLO
United States Attorney

8
9
10 _____/s/
11 LARA M. KROOP
12 Special Assistant United States Attorney
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28